SERVICE DATE – MAY 10, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34828

GREGG HAUG—CONTINUANCE IN CONTROL EXEMPTION—NORTHERN PLAINS RAILROAD, INC., MOHALL RAILROAD, INC. AND MOHALL CENTRAL RAILROAD, INC.

Decided: May 9, 2006

By petition filed on February 9, 2006, Gregg Haug, an individual, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323 to continue in control of three Class III rail carriers: Northern Plains Railroad, Inc. (NPR), Mohall Railroad, Inc. (MRI), and Mohall Central Railroad, Inc. (MHC). We will grant the exemption.

BACKGROUND

According to petitioner, NPR was formed in 1996 and began operations in January 1997. NPR now leases 352.2 miles of rail line, the primary portion of which consists of trackage leased from the Soo Line Railroad Company (now Canadian Pacific Railway), extending from Thief River Falls, MN, to Kenmare, ND, with a branch line to Devil's Lake, ND. MRI was formed in 1999 to acquire ownership from the Burlington Northern and Santa Fe Railway Company, now BNSF Railway Company (BNSF), of a branch line railroad in North Dakota with a terminus at Mohall, ND.[1] Petitioner states that, subsequently, MRI purchased additional lines of railroad in North Dakota from BNSF. Petitioner indicates that MRI has no employees. MRI contracts with NPR to carry out operations on its line, which connects with NPR's line at Lansford, ND. According to petitioner, MRI now owns 32.9 miles of track in North Dakota, all of which are operated by NPR under agreement.

MHC was established in 2005. It purchased a 69.5-mile line of railroad from BNSF, extending from a point near Lakota, ND, to Sarles, ND. The MHC line connects with the NPR line near Munich, ND. The three carriers obtained authority to acquire and operate their lines pursuant to the filing of several notices of exemption.

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[1] Although petitioner indicates that authority to acquire and operate this line was obtained via notice of exemption in 1999, there is no indication in the record that Mr. Haug obtained required authority to commonly control NPR and MRI at that time or thereafter. See 49 U.S.C. 11323(a)(5). Consequently, it appears that petitioner has controlled these two carriers without authorization from the Board for seven years.

DISCUSSION AND CONCLUSIONS

The acquisition of control of at least two rail carriers by a person who is not a rail carrier requires prior approval by the Board under 49 U.S.C. 11323(a)(4). Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation if we find that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope; or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323 is not necessary to carry out the RTP. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the proposed transaction, ensuring that a sound rail transportation system will continue to meet the needs of the shipping public and reducing regulatory barriers to entry [49 U.S.C. 10101(2), (4) and (7)]. Also, by enabling petitioner to continue in control of NPR, MRI, and MHC, an exemption will foster sound economic conditions in transportation and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the RTP will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from an abuse of market power. Petitioner has indicated that there will be no adverse impacts on rail operations or lessening of rail competition, and that no shippers will lose access to rail service on the involved lines. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

This continuance in control transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 11323 petitioner's continuance in control of NPR, MRI, and MHC.

2. Notice will be published in the Federal Register on May 15, 2006.

3. This exemption will be effective on June 14, 2006. Petitions for stay must be filed by May 30, 2006. Petitions to reopen must be filed by June 9, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary